

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:

Dennis Crocker as Owner and/or
Manager of 1 Stop Muffler
& Brake; and Ellen
Strickland as Owner and/or
Manager of 1 Stop Muffler
& Brake

Docket No. CAA-95-H-003

DEFAULT ORDER

By complaint dated March 13, 1995, the U.S. EPA's Office of Enforcement and Compliance Assurance ("OECA") alleged that respondents, Dennis Crocker and Ellen Strickland as owners and/or managers of 1 Stop Muffler & Brake shop in Flat River, Missouri (referred to collectively as "Crocker and Strickland"), violated sections 203(a) (3) (A) and (B) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7522(a) (3) (A) and (B). Section 203(a) (3) (A) (the "Tampering Prohibition") prohibits any person from knowingly removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations issued under title II of the CAA, e.g., a catalytic converter. Section 203(a) (3) (B) (the "Defeat Device Prohibition") prohibits the manufacture, sale or installation of any part or component intended for use with any motor vehicle or motor vehicle engine where the principal effect is to bypass, defeat, or render inoperative any device installed in compliance with title II of the Act. The complaint alleges that Crocker and Strickland violated the Tampering Prohibition

and/or the Defeat Device Prohibition on eleven separate occasions. For these violations, OECA proposed a penalty of \$16,600.

In accordance with 40 C.F.R. § 22.05(b) (1), the complaint, along with notice of an opportunity for a hearing, was served on respondents by certified mail, return receipt requested. Service was completed on March 17, 1995. Pursuant to 40 C.F.R. § 22.15, Crocker and Strickland then had 20 days to submit an answer. No answer has been received.

By motion, dated September 4, 1996, OECA requested that the Board issue an order finding Crocker and Strickland in default pursuant to 40 C.F.R. § 22.17. ^{1/} ^{2/} On September 30, 1996, the Board ordered Crocker and Strickland to show cause by October 21, 1996, why this Board should not issue a default order finding them liable for the violations alleged in the complaint and assessing a penalty of \$16,600. As of this date, the Board has not received a response to the September 30 order. ^{3/}

^{1/} The motion for default was served by regular mail. There is no indication in the record before us that the parties' did not receive the motion.

^{2/} Under 40 C.F.R. § 22.16(c) "the Regional Administrator shall rule on all motions filed or made before an answer to the complaint is filed." Under 40 C.F.R. § 22.03(a) (definition of "Regional Administrator") where, as here, "the complainant is the Assistant Administrator for Enforcement or his delegate, the term Regional Administrator as used in these rules shall mean the Administrator." The Administrator's authority to rule on pre-answer motions in cases governed by Part 22 has been delegated to the Environmental Appeals Board.

^{3/} Copies of the show cause order were sent to both Dennis Crocker and Ellen Strickland by certified mail, return receipt
(continued...)

Accordingly, for the reasons stated in OECA's proposed Default Order, which is adopted and incorporated herein, we find Crocker and Strickland jointly and severally liable for the violations alleged in the complaint. Further, after considering the Agency's Tampering and Defeat Device Civil Penalty Policy for Administrative Hearings, we agree with OECA that a penalty of \$16,600 is appropriate for the violations alleged in the complaint. We therefore adopt the attached Penalty Calculation Worksheets prepared by OECA. Unless otherwise agreed to by the parties, respondents shall pay the full amount of the civil

3/(...continued)

requested. The return receipt from the copy sent to Mr. Crocker indicates that it was personally received and signed for by him on October 4, 1996. The copy sent to Ms. Strickland was returned to the Board unopened, which raises a question as to the fairness of entering a default order against her. In this regard, we note that the return receipt for the complaint sent to Ms. Strickland indicates that it was received and signed for by a representative of Ms. Strickland on March 17, 1995. (The signature of the same representative also appears on the return receipt for the complaint sent to Mr. Crocker on the same date.) Pursuant to 40 C.F.R. § 22.05(b) (1), service of the complaint 'may be made personally or by certified mail, return receipt requested, on the respondent (or his representative).' (Emphasis added). A properly executed return receipt constitutes proof of service of the complaint. 40 C.F.R. § 22.05(b) (1) (v). Nothing about the return receipt in the present case suggests that it was not properly executed, thus proper service of the complaint on Ms. Strickland may be presumed under the rules. Moreover, Ms. Strickland has not notified the Agency of any change of address since delivery of the complaint in the manner indicated. See 40 C.F.R. § 22.05(c) (4) (notice of address changes). Thus, in accordance with the regulations, a default order may be entered against Ms. Strickland notwithstanding the fact that her copy of the show cause order was returned unopened. Nevertheless, in the interest of ensuring that no injustice is done, if Ms. Strickland can later show that the person who signed the return receipt for the complaint on her behalf was not a proper representative, she will be allowed to request reconsideration of this default order.

penalty within sixty (60) days after receipt of this final order.
Payment shall be made by forwarding a cashier's check or
certified check in the full amount payable to the Treasurer,
United States of America at the following address:

EPA - Washington
Hearing Clerk
P.O. Box 360277M
Pittsburgh, PA 15251

So ordered.

Dated: *Nov. 6, 1996*

ENVIRONMENTAL APPEALS BOARD ^{4/}

By: . _____
Ronald L. McCallum
Environmental Appeals Judge

^{4/} Environmental Appeals Judge Kathie A. Stein has recused herself from this matter.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Default Order in the matter of Dennis Crocker as Owner and/or Manager of 1 Stop Muffler & Brake and Ellen Strickland as Owner and/or Manager of 1 Stop Muffler & Brake, Docket No. CAA-95-H-003 were sent to the following persons in the manner indicated:

By Certified Mail
Return Receipt Requested:

Dennis Crocker
1 Stop Muffler & Brake Shop
10 S. Coffman
Flat River, MO 63601-2552

Ellen Strickland
1 Stop Muffler & Brake Shop
10 S. Coffman
Flat River, MO 63601-2552

Marcia S. Ginley
U.S. EPA
Office of Enforcement and
Compliance Assurance, Air
Enforcement Division, Mobile
Source Enforcement Branch
12345 W. Alameda, Suite 214
Denver, CO 80228

Dated: NOV 6 1996

Mildred T. Johnson
Secretary

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N AGENCY

Docket No. CAA-95-H-003

Respondents.

DEFAULT ORDER

Findings of Fact

5. Respondents, having failed to file timely Answers, pursuant to 40 C.F.R. § 22.17(a), are deemed to have admitted the

issues of law and fact contained in the **Findings** of Fact and Conclusions of Law herein.

6. Respondents are each a **"person"** as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).

7. On or about August 24, 1992, each Respondent was an owner and/or manager of a motor vehicle repair and service facility known as 1 Stop Muffler and Brake Shop located at 107 Rinke Street, Flat River, Missouri (**"1 Stop Muffler"**).

8. On August 24, 1992, inspectors for EPA inspected 1 Stop Muffler to determine compliance with section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3).

9. On or about August 24, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of emission control devices or elements of design on a motor vehicle, a 1979 Chevrolet, Camaro, with Vehicle Identification Number (**"VIN"**) **1Q87L9L580386**, by the installation on this vehicle of a dual exhaust system, which dual exhaust **system** had a modified intake manifold and no catalytic converter. This vehicle was originally manufactured with a single exhaust system and a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or it's engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter and intake manifold systems.

10. On or about August 17, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1984 GMC, S-15 Truck with VIN **1GTCS14B2E25D2285**, by the installation on this vehicle of a used untested catalytic converter. This vehicle was originally manufactured with a catalytic converter.

11. On or about August 10, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1987 Chevrolet Van with VIN **1GBEG25HXH7127826**, by the installation on this vehicle of a straight pipe in place of the catalytic converter. This vehicle was originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold **and/or** offered to sell parts and components intended for use with, or as part of, this vehicle or it's engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

12. On or about July 28, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1976 Pontiac Grand Prix with VIN **2J57P6P21206**, by the installation on this vehicle of a straight pipe in place of the catalytic converter. This **vehicle was** originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or its engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

13. On or about August 14, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1980 Chevrolet Chevette, by the installation on this vehicle of a straight pipe in place of the catalytic converter. This vehicle was originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or its engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

14. On or about July 29, 1992, Respondents knowingly removed or rendered inoperative or caused **the** removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1984 Volkswagen with VIN **WVWCA0163EW162657**, by the installation on this vehicle of a straight pipe in place of the catalytic converter. This vehicle was originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or its engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

15. On or about August 7, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1979 Ford with VIN **9K92Y225975**, by the installation on this vehicle of a straight pipe in place of the catalytic converter. This vehicle was originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or its engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

16. On or about February 11, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1977 Chevrolet Pickup with VIN **CCL247S121351**, by the installation on this vehicle of a straight pipe in place of **the** catalytic converter. This vehicle was originally manufactured with a catalytic converter. In addition, Respondents knowingly installed, sold and/or offered to sell parts and components intended for use with, or as part of, this vehicle or **it's** engine, where a principal effect of the parts or components was to bypass, defeat or render inoperative the catalytic converter.

17. On or about July 31, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1979 Firebird., by the installation on this vehicle of an aftermarket catalytic converter without complying with the EPA enforcement policy on installation of aftermarket catalytic converters, "**Sale and Use of Aftermarket Catalytic Converters**", 51 Fed. Reg. **28114** (August 5, 1986) ("**AMCC Enforcement Policy**"). Respondents failed to maintain the specific information required by the AMCC Enforcement Policy. This vehicle was originally manufactured with a catalytic converter.

18. On or about November 15, 1990, Respondents knowingly removed or **rendered** inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1985 Firebird, by the installation on this vehicle of an aftermarket catalytic converter without complying with the AMCC Enforcement Policy. Respondents failed to maintain the specific information required by the AMCC Enforcement Policy. This vehicle was originally manufactured with a catalytic converter.

19. On or about May 30, 1992, Respondents knowingly removed or rendered inoperative or caused the removal or rendering inoperative of an emission control device or element of design on a motor vehicle, a 1987 Camaro, by the installation on this vehicle of an **aftermarket** catalytic converter without complying with the AMCC Enforcement Policy. Respondents failed to maintain the specific information required by the AMCC Enforcement Policy. This vehicle was originally manufactured with a **catalytic** converter.

20. A catalytic converter and intake manifold are "devices or elements of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under subchapter II of the **Act**" within the meaning of sections 203(a)(3)(A) and (B) of the Act, 42 U.S.C. §§ 7522(a)(3)(A) and (B).

21. On each of the eleven occasions set forth in paragraphs 9 through 19 of this Default Order, the vehicle had been sold and delivered to the ****ultimate purchaser****, as that term is defined in section 216 of the Act, 42 U.S.C. § 7550.

Conclusions of Law

24. Pursuant to sections 203 and 205 of the Act, 42 U.S.C. §§ 7522 and 7524, Complainant has authority to commence this action for assessment of a civil penalty against Respondents for violations of section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3).

25. Respondents are each a ****person**** as defined in section 382(e) of the Act, 42 U.S.C. § 7602(e).

26. On each of the eleven occasions set forth in paragraphs 9 through 19 of this Default Order., Respondents violated section 203(a)(3)(A) of the Act, 42 U.S.C. § 7522(a)(3)(A). Pursuant to sections 203 and 204 of the Act, 42 U.S.C. §§ 7522 and 7524, Respondents are liable for the eleven violations of section 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A).

27. On each of **the seven** occasions set forth in paragraphs 9, 11, 12, 13, 14, 15 and 16 of this Default Order, Respondents also violated section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B). Pursuant to sections 203 and 204 of the Act, 42 U.S.C. §§ 7522 and 7524, Respondents are liable for the seven violations of section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

28. Pursuant to sections 203 and 204 of the Act, 42 U.S.C. §§ 7522 and 7524, a penalty of Sixteen Thousand Six Hundred Dollars (\$16,600) is appropriate for the violations of section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3) set forth in paragraphs 26 and 27 of this Default Order.

29. Pursuant to sections 203 and 204 of **the Act**, 42 U.S.C. §§ 7522 and 7524, Respondents are jointly and **severally** liable for a penalty of Sixteen Thousand Six Hundred Dollars (\$16,600).

Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Respondents are in default.

2. As proposed in the Complaint, a civil penalty of Sixteen Thousand Six Hundred Dollars (\$16,600) is hereby assessed against Respondents for the violations of section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3) set forth in paragraphs 9 through 19 of this Default Order. Respondents are jointly and severally

liable for the civil penalty. The penalty is due and payable by Respondents, without further proceedings, sixty (60) days after the date of this Default Order.

3. Pursuant to 40 **C.F.R. §** 22.17, Respondents have each waived their rights to a hearing on the factual allegations contained in the Complaint and such allegations are hereby deemed admitted by Respondents.

DATED: _____, 1996

Administrative Law Judge

PENALTY CALCULATION WORK-SHEETS

Respondents:

ELLEN STRICKLAND
and
DENNIS CROCKER

OWNERS AND/OR MANAGERS OF
ONE STOP MUFFLER AND BRAKE

Calculations prepared pursuant to EPA's "Tampering and Defeat
Device Civil Penalty Policy for Administrative Hearings."

COUNT 1 -

Description of Violation - Installation of an exhaust system
different than the original configuration and without a catalytic
converter in violation of the Tampering and Defeat Device
Prohibitions.

Gravity - Level "B" - Partial deactivation of primary emission
control devices or replacement of previously tampered with
components or elements of design.

History or Prior Violations - None

Business Size of the Violator - Assumed under 3 million

Penalty - \$1,500 (See "Defeat Device and Tampering Penalty Table
For Administrative Hearings For All Violators Other Than Dealer
or Manufacturer Violations of (3) (A) ")

TOTAL - \$1,500

COUNT 2 -

Description of Violation - Replacement of catalytic converter
with a used untested catalytic converter in violation of the AMCC
Enforcement Policy and the Tampering Prohibition.

Gravity - Level "A" - Involve6 Tampering or Defeat Devices which
render inoperative, primary emission control systems presumed to
result in a large increases in emissions.

History Or Prior Violations - None

Business Size of the Violator - Assumed under 3 million

COUNTS 5 - 8

Description of Violation - Replacement of vehicle's catalytic converter with a **straight** pipe in violation of Tampering and Defeat Device **Prohibitions**.

Gravity - Level "A" - Involves Tampering or Defeat **Devices** which render inoperative, primary emission control systems presumed to result in a large increase in **emissions**.

History or Prior Violations - None

Business size of the Violator - Assumed under 3 million

Penalty - \$1,900 x 4 (See "**Defeat Device and Tampering Penalty Table For Administrative Hearings For All Violators Other Than Dealer or Manufacturer Violations of (3) (A)**")

TOTAL - \$7,600

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COUNTS 9 - 11

Description of Violation - Installation of aftermarket catalytic converters without maintaining the necessary records required by the **AMCC** Enforcement. **Policy** in violation of Tampering Prohibition.

Gravity - Level "1" - The records are so deficient that it cannot be determined with certainty either from the service invoice or by further investigation which installations were **misapplication** over the previous six month **period** as a result of deficiencies in certain significant requirements.

History or Prior Violations - None

Business Size of the Violator - Assumed under 3 million

Penalty - \$600 x 3 (See "**Recordkeeping and Retention Penalty Table**")

TOTAL - \$1,800

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TOTAL PENALTY - \$16,600

Prepared by, _____

John Connell,
Environmental Protection Specialist
Mobile Source Enforcement Branch

Penalty - \$1,900 (See "Defeat Device and Tampering Penalty Table For Administrative Hearings For All Violators Other Than Dealer or Manufacturer Violations of (3) (A)")

TOTAL - \$1,900

COUNT 3 -

Description of Violation - Replacement of vehicle's Catalytic converter with a straight pipe in violation of Tampering and Defeat Device Prohibitions,

Gravity - Level "A" - Involves Tampering or Defeat Devices which render inoperative, primary emission control systems **presumed** to result in a large increase in emissions.

History or Prior Violations - None

Business Size of the Violator - Assumed under 3 million

Penalty \$1,900 (See "Defeat Device and Tampering Penalty Table For Administrative Hearings For All Violators Other Than Dealer or Manufacturer Violations of (3) (A)")

TOTAL - \$1,900

COUNT 4 -

Description of Violation - Replacement of vehicle's catalytic Converter with a straight pipe in violation of Tampering and Defeat Device Prohibitions.

Gravity - Level "A" - Involves Tampering or Defeat Devices which render inoperative, primary emission control systems **presumed** to result in a large increase in emissions.

History or Prior Violations - None

Business Size of the Violator - Assumed under 3 million

Penalty - \$1,900 (See "Defeat Device and Tampering Penalty Table For Administrative Hearings For All Violators Other Than Dealer or Manufacturer Violations of (3) (A)")

TOTAL - 81,900
